STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of TCM-T , Minor.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

SHARON MCCORMICK,

Respondent-Appellant,

and

ROBERT PATTON THOMAS, JR.,

Respondent.

UNPUBLISHED
January 30, 2001

No. 226878
Wayne Circuit Court
Family Division
LC No. 93-308035

Before: Hoekstra, P.J., and Whitbeck and Meter, JJ.

PER CURIAM.

Respondent-appellant Sharon McCormick appeals as of right the family court order terminating her parental rights to her infant son, TCM-T, pursuant to MCL 712A.19b(3)(a)(ii), (g), (i), (j), and (l); MSA 27.3178(598.19b)(3)(a)(ii), (g), (i), (j), and (l).[1] We affirm.

I. Basic Facts And Procedural History

McCormick has given birth to four children: SM, MM, CW, and TCM-T. In relying on subsections (i) and (l) to terminate McCormick's parental rights to TCM-T, the family court made her history as a parent before she gave birth to TCM-T relevant to this case. Apparently, McCormick's daughters SM and MM live with their respective fathers, but it is not clear whether McCormick retains her parental rights to them. However, the same family court judge who presided in this case, citing MCL 712A.19b(3)(b)(i), (b)(ii), (c)(i), (g), and (j); MSA

[1] The family court also terminated respondent Robert Patton Thomas, Jr.'s parental rights to the baby. However, because he does not appeal, this opinion does not address his circumstances.

27.3178(598.19b)(3)(b)(i), (b)(ii), (c)(i), (g), and (j), terminated McCormick's parental rights to her son, CW, in 1997. The evidence in that earlier case showed that McCormick had physically abused CW on a number of occasions in 1992, 1993, and 1995. McCormick refused to participate in the services the Family Independence Agency (FIA) offered to her while that case was pending.

McCormick gave birth to TCM-T approximately nineteen months later. TCM-T was premature, initially suffered respiratory distress, was placed on a ventilator for a day, and was also treated for infection. Although a first series of drug tests had negative results, tests done on TCM-T's meconium, the matter that accumulates in a fetus's bowels before birth, showed that he had been exposed to cocaine in utero. Nursing notes also suggest that McCormick tested positive for cocaine and marijuana during labor and delivery and had not received any prenatal care. TCM-T was released from the hospital twenty-seven days after he was born, but was placed directly in foster care.

According to case workers who met with McCormick after she gave birth, McCormick said that she wanted to care for TCM-T, she had an apartment, but lacked baby supplies. McCormick denied using drugs and reportedly explained that TCM-T was exposed to drugs before he was born because there was an occasion when she was in a car with other individuals who were using drugs. She also said that other residents of her apartment building were drug users and she had been exposed to drugs because of them. Case workers said that McCormick reported being unable to obtain prenatal care because of her job.

A case worker filed the original petition case just over three weeks after TCM-T was born, but before he was discharged from the hospital. The petition sought to terminate McCormick's parental rights immediately, alleging that McCormick had not obtained prenatal care, she had tested positive for cocaine and marijuana, and TCM-T had been born prematurely, at which time he tested positive for cocaine exposure. The petition also noted that, despite denying drug use, McCormick admitted being around people who used drugs, she had been evasive with case workers who attempted to determine where she was living, and she had been involved with the FIA in the past because of abuse and neglect. Finally, the petition requested termination because the McCormick's parental rights to CW had been terminated after attempts to rehabilitate her had failed.

Nevertheless, the FIA evidently offered McCormick a parent/agency agreement, administered by the St. Vincent and Sarah Fisher Center (SVSFC), for the six months before the family court held the adjudication in November 1999. The parent/agency agreement had nine goals for McCormick, who would: (1) attend scheduled visits, (2) "enroll, attend, and complete parenting classes and demonstrate skills during parenting time," (3) find and document that she had a legal source of income, (4) maintain suitable housing, (5) undergo a "drug/alcohol assessment and follow through with recommendations," (6) complete random drug testing, (7) participate in therapy, (8) maintain weekly contact with the case worker, (9) undergo a "psychological/psychiatric evaluation . . . and follow through with recommendations." McCormick did not comply with this agreement. Although she had been referred to a variety of health, drug, parenting, and housing services, her case worker had no proof that she had undergone evaluations that were prerequisites for these programs or that she had used any of

these services. In fact, she had refused inpatient drug treatment. After failing to show up at a number of scheduled visits, McCormick visited TCM-T twice between the end of May 1999 and November 8, 1999. Those visits were particularly difficult for case workers to arrange because McCormick did not return their telephone calls. Even when she did use the bus tickets provided for these visits, McCormick made case workers search for her at the bus stop, delaying the visits. She had provided documentation of only four hours of work, which she performed in August 1999. McCormick did not have housing as of October 1999 and she was participating in a Department of Housing and Urban Development project, but she never followed up with her case worker to report whether she had secured housing. Also, she had contacted her case worker only three times between August and November 1999, which was not the weekly contact required under the agreement.

At the adjudication on November 9, 1999, the FIA presented McCormick's case workers, who testified to their interactions with McCormick shortly after TCM-T's birth, as described above. When McCormick testified, she said that she had attempted to obtain prenatal care. However, the clinic that provided her with care in the past informed her that she would have to go to Grace Hospital to receive services but, before she could do so, she gave birth. She flatly denied using drugs. She believed that the heavy lifting she had to do at her job at Joe Louis Arena as well as the long walk to the bus to go to and from work precipitated her premature delivery. McCormick said that she wanted to take care of TCM-T and would do anything necessary to regain custody. She was in the process of moving out of the apartment building where she had been living and had acquired some supplies to care for TCM-T, like blankets, diapers, and milk. She also claimed that she had seen TCM-T shortly before the adjudication.

The family court agreed with McCormick's lawyer's argument that the FIA, which did not introduce any documentary evidence that McCormick had ever used drugs, had failed to present legally admissible evidence that she had in fact used drugs during her pregnancy; the only evidence relevant to drug use was McCormick's denials, to which she testified personally and the case workers repeated. Nevertheless, the family court found that TCM-T came within the court's jurisdiction because of the evidence that it had previously terminated McCormick's parental rights to CW and because McCormick had failed to obtain prenatal care.

The disposition took place on March 2, 2000, at which time the FIA introduced TCM-T's medical records into evidence. These records finally provided evidence of his in-utero drug exposure. The family court also admitted into evidence the November 1999 SVSFC report as well as a new report prepared for the disposition, dated March 2, 2000. That new SVSFC report indicated that McCormick remained out of compliance with the parent/agency agreement. The report noted that she had attended only three visits with TCM-T, contradicting her claim that she had visited TCM-T shortly before the adjudication in November 1999. She still had not participated in parenting classes, a mental health or substance abuse evaluation, therapy, or bi-weekly drug testing despite reminders and the fact that her one drug test had negative results. She had provided no additional documentation of a legal source of income although she claimed to be working. Though she had secured an apartment, she had not yet asked for a home assessment from her case worker. She had contacted her case worker, Elizabeth Van Schoick, only a total of seven times while this case was pending.

At the dispositional hearing, Van Schoick reiterated the information she included in the March 2, 2000 SVSFC report she prepared. She added that, of McCormick's three visits with TCM-T, two visits occurred in June 1999 and the last visit occurred in the second week of February 2000. Van Schoick also noted that McCormick acted on her own initiative when she took the single drug test in February 2000. Van Schoick had no proof that McCormick was working. Although Van Schoick said that McCormick had expressed interest in caring for TCM-T, she said that McCormick was not fit to do so because she had never complied with the parent/agency agreement. She believed that termination was in TCM-T's best interests because he needed permanency.

The family court issued a written opinion and order terminating McCormick's parental rights to TCM-T in March 2000. The family court made brief factual findings that related the circumstances alleged in the petition. Other findings related to TCM-T's drug exposure before birth, the fact that McCormick's parental rights to CW had been terminated, and that McCormick had not complied with the parent/agency agreement that required her to obtain a variety of services. After stating that there was clear and convincing evidence to terminate her parental rights under MCL 712A.19b(3)(a)(ii), (g), (i), (j), and (l); MSA 27.3178(598.19b)(3)(a)(ii), (g), (i), (j), the family court said that it was in TCM-T's best interests to terminate McCormick's parental rights without any additional explanation.

II. Standard Of Review

This Court reviews a family court's decision to terminate parental rights for clear error.[2]

III. Challenges To The Decision To Terminate

A. Disputed Factual Issues

McCormick challenges the clear and convincing nature of the evidence used to terminate her parental rights, noting that the evidence concerning her drug use was ambiguous, she desired to keep her son, and had "substantially" complied with the parent/agency agreement because she had secured a job and housing. However, there are a number of major flaws with her argument.

First, despite her denials and single negative drug test in February 2000, a reasonable factfinder could infer that McCormick used cocaine at some point during her pregnancy with TCM-T because he tested positive for the substance after he was born. Additionally, hospital records indicate that a test performed on McCormick's urine when she was admitted to deliver TCM-T showed that she had used cocaine and marijuana. Even if there was insufficient evidence that she used drugs at the time the family court conducted the adjudication in November 1999, the issue had been resolved by the time the court held the dispositional hearing in March 2000. Thus, there was both circumstantial and direct evidence that supported the family court's conclusions that she used drugs while she was pregnant.

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[2] *In re Huisman*, 230 Mich App 372, 384; 584 NW2d 349 (1998), overruled on other grounds by *In re Trejo*, 462 Mich 341, 353, n 10; 612 NW2d 407 (2000).

Second, the record does not support McCormick's argument that she had "substantially" complied with the parent/agency agreement. While Van Schoick testified at the disposition that McCormick had rented an apartment, McCormick had not arranged to have a case worker inspect it to determine whether the housing would be safe and adequate for a baby. As a result, it is not at all clear that the housing McCormick found was the sort of appropriate housing required under the parent/agency agreement. As for the evidence that McCormick had found legal employment, the only documentation of a job that Van Schoick ever saw was from a job McCormick worked for four hours in August 1999. Though Van Schoick noted that McCormick claimed that she had a new job, there was no documentary evidence to confirm this and, because McCormick did not testify at the disposition in March 2000, the record does not even reflect what sort of work or income she may have had.

Furthermore, the number of provisions in the parent/agency agreement McCormick failed to comply with far exceed the areas in which she made even nominal progress. The two SVSFC reports as well as Van Schoick's testimony indicate that she never attended therapy, parenting classes, substance abuse screening or counseling, or mental health screening. She failed to maintain contact with her case worker, provided only one drug test, did not enroll in job training, and did not visit TCM-T when the court allowed visitation. Thus, contrary to her argument, there was clear and convincing evidence to support the family court's findings that she failed to take any of these steps required under the agreement.

B. Statutory Grounds for Termination

The more compelling flaw in McCormick's argument is her failure to address any of the five statutory grounds the family court cited when terminating her parental rights to show why any of the factual matters she raises are at all relevant to the family court's decision in this case. The record clearly supported termination under at least three of these five grounds.

MCL 712A.19b(3)(a)(ii); MSA 27.3178(598.19b)(3)(a)(ii) requires a family court to terminate parental rights if there is clear and convincing evidence that "[t]he child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." McCormick had her second visit with TCM-T on June 22, 1999 and she did not see him again until the second week of February 2000, the only other substantiated visit. That constituted a period of approximately 220 days in which she had no contact with her child, which was far in excess of the 91 day period described in the statute. Whether McCormick's calls and visits to her case manager in August and October 1999, or her appearance at the adjudication in November 1999, were acts consistent with seeking custody might be debatable. However, she does not claim that she sought custody at any point during this period and, even though she said that she wanted to raise TCM-T, there was no point during this time when she indicated that she was ready, willing, or able to take him. Thus, in the absence of a particularized argument on this statutory ground, the evidence appears sufficient to support the family court's decision.

The evidence supporting termination under MCL 712A.19b(3)(g); MSA 27.3178(598.19b)(3)(g) is less clear and convincing. Subsection (g) requires a family court to terminate parental rights if there is clear and convincing evidence that "[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable

time considering the child's age." The possible problem with terminating McCormick's parental rights under this provision is that she never had the opportunity to provide proper care or custody for TCM-T because he went from the hospital directly into foster care. There are no specific factual allegations in the termination petition concerning McCormick's failure to provide care and custody of TCM-T after he was born. Nor did the family court make any specific factual findings concerning care and custody. Thus, we are uncertain what facts and evidence supported the family court's conclusion that termination was proper on this ground.

Regardless of any uncertainty concerning whether termination was proper under subsections (a)(ii) or (g), the evidence supporting termination under the three other subsections was much stronger, making termination proper. For example, MCL 712A.19b(3)(j); MSA 27.3178(598.19b)(3)(j) requires termination if there is clear and convincing evidence that "[t]here is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." The record developed while the case concerning McCormick's parental rights to CW was pending, which was incorporated in the lower court record in this case, makes clear that she has the capacity to physically abuse her children, which would surely harm TCM-T. Given that she has failed to acknowledge her past acts of abuse and has yet to treat with any sort of therapy or services, it is likely that TCM-T would be harmed if he were given to McCormick.

Termination in this case was also clearly proper under MCL 712A.19b(3) (i) and (l); MSA 27.3178(598.19b)(3)(i) and (l). Subsection (i) requires termination if there is clear and convincing evidence that "[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful." In contrast, subsection (l) requires termination if there is clear and convincing evidence that "[t]he parent's rights to another child were terminated as a result of proceedings under section 2(b) of this chapter or a similar law of another state."

The core similarity between these two provisions is that they require proof of a previous termination of parental rights. With a copy of the termination order concerning CW in the lower court record in this case, there is no question that McCormick had her parental rights terminated previously. Thus, there was sufficient evidence of this element of both provisions to support termination.

The distinction between subsections (i) and (l) that is most relevant in this case is that subsection (i) requires the parent to be given an opportunity to improve his or her parenting skills before termination and subsection (l) permits immediate termination regardless of the opportunity for rehabilitation. The record concerning CW documents the many opportunities McCormick had to improve as a parent by taking advantage of the same variety of services offered in this case. Nevertheless, she failed to use these services or make any improvement on her own and, as a result, she lost her parental rights to CW. Thus, again, there was sufficient evidence that, with or without an opportunity for rehabilitation, she had her parental rights terminated.

These two provisions are also different in that subsection (i) requires proof of serious or chronic abuse to support a new termination while subsection (l) does not single out any particular

reasons for a previous termination. This distinction is less relevant in this case because a reasonable factfinder could conclude that the evidence that McCormick committed multiple acts of physical and emotional abuse against CW for a number of years constituted the sort of serious or chronic abuse identified in subsection (i). Given that subsection (l) does not require proof that there was any sort of abuse underlying the previous termination, there was clear and convincing evidence supporting termination under both provisions.

C. Best Interests Factor

Although McCormick does not argue that termination is against TCM-T's best interests, her brief does cite *Trejo, supra*, which focused on this issue and we give her the benefit of the doubt on whether she wanted to raise this issue. MCL 712A.19b(5); MSA 27.3178(598.19b)(5) states that a family court "shall order termination of parental rights" if it finds clear and convincing evidence to terminate. In other words, termination is mandatory once the court finds evidence of at least one statutory ground to terminate parental rights.[3] Only if the family court finds evidence on the record as a whole that termination is *not* in the child's best interests can it refuse to terminate parental rights.[4]

In this case, the family court affirmatively stated that termination was in the TCM-T's best interests. The only evidence directly addressing TCM-T's best interests came from Van Schoick's testimony at the disposition, where she said that termination would be in his best interests because McCormick had shown no progress in complying with the parent/agency agreement and TCM-T needed permanency. In other words, Van Schoick evidently concluded that McCormick could not meet TCM-T's needs within a reasonable time given his need for permanency. Termination is a step toward meeting this need for permanency. In the absence of any evidence that McCormick has a bond with TCM-T or that some other factor makes retaining her parental rights clearly necessary to his best interests, whether those interests relate to his physical or emotional needs, then it is impossible to say that the family court erred when it decided this issue.

D. Conclusion

In sum, there is no support in the record for McCormick's challenge to the evidence presented in this case. Even if the evidence supporting termination was not clear and convincing under subsections (a)(ii) and (g), there was clear and convincing evidence supporting termination under subsections (i), (j), and (l). A family court needs only one statutory ground to terminate parental rights.[5] There was certainly one statutory ground proven in this case. Furthermore, the

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[3] See *In re IEM*, 233 Mich App 438, 450-451; 592 NW2d 751 (1999).

[4] See *Trejo*, *supra* at 353-354.

[5] See *Trejo*, *supra* at 350; *IEM*, *supra* at 450.

evidence does not suggest that termination was clearly against TCM-T's best interests. Thus, the family court did not err in terminating her parental rights.

Affirmed.

/s/ Joel P. Hoekstra
/s/ William C. Whitbeck
/s/ Patrick M. Meter